IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.1469 of 2002

P.Manikasundaram .. Revision Petitioner/Accused

Vs.

Sivasambu .. Respondent/Complaintant

Prayer: This Criminal Revision has been preferred under Section 397 and 401 of Cr.P.C., against the judgment dated 06.11.1998 in C.A.No.54 of 1998 passed by the II Additional Sessions Judge, Erode, confirming the judgment in C.C.No.454 of 1997 on the file of the Judicial Magistrate No.I, Erode, dated 27.1.1998.

For Appellant : Mr.D.Selvaraj
For Respondents : Mr.T.P.Manoharan

ORDER

This Revision has been preferred against the judgment in C.A.No.54 of 1998 on the file of the II Additional Sessions Judge, Erode. The complainant has preferred private complaint under Section 200 of Cr.P.C., for an offence under Section 138 of the Negotiable Instrument Act, against the accused before the Judicial Magistrate No.I, Erode, who after recording the sworn statement of the complainant had taken the complaint on file and issued summons to the accused for appearance. On appearance of the accused, copies under Section207 of Cr.P.C., were furnished to the accused and when the charges levelled against the accused is explained to him, he pleaded not guilty. On the side of the complainant P.W.1 to P.W.3 were examined and Ex.P.1 to P.10 were marked.

2. P.W.1 is the complainant, who would depose that on 01.06.1997 the accused had drawn Ex.P.1-cheque for the said amount as a security for the debt borrowed by him. On 1.8.1998 the accused had paid Rs.2,600/- towards interest. When the cheque was presented for collection in Indian Bank, Perunthurai Branch, the same was returned with an endorsement 'payment stopped by the creditor'. This fact was spoken to by P.W.2 an employee of Indian Bank, Perunthurai Branch. Ex.P.2 is the Bank memo sent along with

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EX.P.1-cheque. P.W.3 is an employee of the Bank of Baroda, wherein the accused is having his account. As contemplated under section 138 (b) of the Negotiable Instrument Act, the complainant had issued notice to the accused informing about the return of the cheque. Ex.P.3 is the copy of the notice. Ex.P.6 is the acknowledgment. Ex.P.7 is the reply notice dated 11.8.1997. Ex.P.8 & P.9 are the current account slip of the complainant. Ex.P.10 is the statement of account relating to the accused's account in P.W.3's bank.

3. When incriminating circumstances were put to the accused, he denied his complicity with the crime. After going through the available evidence both oral and documentary, the learned trial judge has held that an offence under Section 138 of the Negotiable Instrument Act has been made out against the accused beyond any reasonable doubt and accordingly convicted and sentenced the accused to pay a fine of Rs.20,000/- with default sentence and has further awarded Rs.18,000/- as compensation from out of the fine amount under Section 357(1) of Cr.P.C. Aggrieved by the findings of the learned trial judge, the accused has preferred an appeal before the II Additional Sessions Judge, Erode, in C.A.No.54 of 1998. After giving due deliberation to the submissions made by both sides counsel and after scrutinizing the evidence both oral and documentary, the learned first appellate judge has confirmed the judgment of the trial Court on the ground that there is no reason to interfere with the findings of the learned trial judge. Hence, this revision before this court by the accused.

4. Now the point for determination in this revision is whether the findings of the learned first appellate judge in C.A.No.54 of 1998 is liable to be set aside for the reasons stated in the memorandum of revision?

5.The Point:-

5(a) The learned counsel for the revision petitioner would contend that it is the case of the accused that Ex.P.1-cheque kept in his shop was stolen away by one Gopalakrishnan, a staff of the complainant and that with the help of the said cheque stolen from the accused, the complainant has forged the same and preferred this private complaint as the accused had drawn the cheque in favour of the complaint for Rs.65,000/-. The learned trial judge has given a finding with regard to this point to the effect that if the case of the accused is true as to the loss of the cheque, he would have definitely preferred a police complaint, but absolutely there is no evidence on record to show that the accused had lost the cheque, and there was a complaint preferred by the accused with the police.

5(b) The next point urged before this Court by the learned counsel for the revision petitioner is that the notice sent by the complainant under the original of Ex.P.3 is bereft of particulars like the cheque number etc.,. But this contention of the learned counsel for the

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revision petition cannot also be upheld because under Section 138(b) of the Negotiable Instrument Act, the complainant shall give a notice to the accused informing that the cheque drawn and handedover by the accused, on presentation was dishonoured and the accused after receipt of the notice within 15 days of the receipt of the notice has to discharge the cheque amount. It is no where stated in the said provision of law that details of the cheque drawn and handedover by the accused need be stated the notice. Further, as rightly observed by the learned trial judge that even though under Section 29 of Cr.P.C., the learned Judicial Magistrte has got powers only to levy a fine upto Rs.5000/- but under section 138 of the Negotiable Instrument Act, the Judicial Magistrate has got power to levy fine to the extent of double the amount of the dishonoured cheque. Under such circumstances, I do not find any reason to interfere with the well considered judgment of the learned II Additional Sessions Judge, Erode, in C.A.No.54 of 1998, which is neither infirm nor illegal to warrant any interference from this Court. Point is answered accordingly.

6 In the result, the revision is dismissed confirming the judgment in C.A.No.54 of 1998 on the file of the II Additional Sessions Judge, Erode.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

To,

1.The II Additional Sessions Judge, Erode.
2.The Judicial Magistrate No.I, Erode.

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RVL 04.04.2007

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